

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY No. 04-30618

ADV No. 04-3_____

Barry B. Bosold,

Debtor.

Patti J. Sullivan, Trustee,

Plaintiff,

COMPLAINT

vs.

David Gimberline,

Defendant.

Patti J. Sullivan, Trustee ("Trustee") of the Bankruptcy Estate of Barry B. Bosold ("Debtor") as and for her Complaint against David Gimberline ("Defendant"), states and alleges as follows:

1. Trustee is the duly appointed Chapter 7 Trustee of the bankruptcy estate of the Debtor.
2. This bankruptcy case was commenced on February 5, 2004 by the filing of a voluntary Chapter 7 petition.
3. This adversary proceeding is a core proceeding within the meaning of 28 U.S.C. §157(b)(2).
4. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§157 and 1334. This case arises under 11 U.S.C. §§544, 547, 548 and 550.

5. Upon information and belief, in December, 2003, a corporation of which the Debtor was a principal owed the Defendant approximately \$9,000 in antecedent debt. The Debtor purported to provide security for payment of that debt by granting to the Defendant a security interest in the form of a “second lien” against a 1998 Harley Davidson motorcycle VIN1HD1GDL15WY326722 (“Harley Davidson”) as security for payment of the debt. A true and correct copy of a December 1, 2003 letter to that effect is attached hereto as Exhibit 1. The Defendant, as of the date of the commencement of the bankruptcy case, had not perfected his lien in the Harley Davidson.

6. At all relevant times, there existed at least one creditor of the Debtor.

7. The lien held by the Defendant in the Harley Davidson is avoidable by the Trustee pursuant to 11 U.S.C. §548 and recoverable from the Defendant pursuant to 11 U.S.C. §550, with the transfer represented by the lien automatically preserved for the benefit of the estate pursuant to 11 U.S.C. §551.

8. Alternatively, if the Debtor was personally liable to the Defendant for the sum of \$9,000, then the above-described grant of a security interest in the form of a second lien against the Harley Davidson is a transfer made on account of antecedent debt and is avoidable by the Trustee pursuant to 11 U.S.C. §547.

9. Pursuant to 11 U.S.C. §547(e)(2)(C), the Defendant’s lien in the Harley Davidson is deemed to have been perfected immediately before the date of the filing of the petition.

10. The lien held by the Defendant in the Harley Davidson is avoidable by the Trustee pursuant to 11 U.S.C. §§547 and 544 with that lien recoverable by the Trustee from the Defendant pursuant to 11 U.S.C. §550 with the lien transfer represented by the lien automatically preserved for the benefit of the estate pursuant to 11 U.S.C. §551

WHEREFORE, the Trustee requests the judgment of the court:

1. Avoiding the transfer by the Debtor to the Defendant of lien rights in the 1998 Harley Davidson motorcycle, VIN 1HD1GDL15WY326722, and preserving those lien rights for the bankruptcy estate and ordering a recovery of that lien from the Defendant.

2. Awarding the Plaintiff her costs and disbursements in this action and any other or further relief as the court deems just and equitable.

FULLER, SEAVER & RAMETTE, P.A.

Dated: March 26, 2004

By: /e/ Randall L. Seaver

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BARRY BOSOLD, PRINCIPAL
CPM, RPA FMA
DAVID GIMBERLINE, BROKER

1 December, 2003

TO: David Kimberline
FROM: Barry
RE: Hold Back on Fees and Commissions and Security Arrangement

Dave:

As you know, times have gotten tougher than we anticipated. The \$30,000 loss I took personally on the 2700 East Lake Street deal in order to get it closed in February not only set me back but hurt my ability to deal with operating expenses in the company. Having the entire company reserve (held in stock) crash at a value loss in excess of \$70,000 is making it difficult to cover ongoing operating expenses between closings. Not having any significant closings other than the few Creekview deals hasn't helped either. If not for your fee deferments from early this year our doors would have to close. I appreciate your willingness to continue to defer some of the fees due you on several deals in order to help out. I think it is necessary, however, for what's owed you now and will be owed from deals pending to be identified and secured in some way in case the worst should happen. Particularly if there is a bankruptcy you need to have what is owed you called out as income due and not be classed with creditor debt.

To date you are owed the following as unpaid fees and commissions:

- Due with December invoices:	\$1,000
- Due with Creekview invoices pending and collected in Nov/Dec (mgmt fee plus commissions)	\$1,100
- Creekview Mgmt fee portion (est. January)	\$ 400
- Past Due 2 nd quarter 2003 (2 x \$3,000)	\$6,000

Total Due:

\$8,500 *9,000*

As you know, the company itself has no significant assets other than the reserves, which are now essentially worthless. I can't pledge them to cover your unpaid fees. I can, however, pledge my Harley, which is almost paid off. The equity in the bike is slightly in excess of the equity over the debt (payments are current also and will stay so). This letter will serve as my authorized 'second lien' against the equity in the Harley to protect your unpaid fees until such time as we can arrange to pay you current.

Barry B Bosold, Principal

Date: 12/1/03

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EXHIBIT 1